

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**PUBLIC HEARING**  
**FEBRUARY 9, 2006**

The Lake County Board of Adjustment met Thursday, February 9, 2005 in the Commission Chambers on the second floor of the Round Administration Building in Tavares, Florida to consider requests for variances and any other petitions that may be submitted in accordance with Chapter XIV of the Lake County Land Development Regulations.

**Board Members Present:**

Howard (Bob) Fox, Jr.  
Darren Eslinger  
Henry Wolsmann, Vice Chairman  
Ruth Gray  
Mary Link Bennett  
Donald Schreiner, Chairman  
Carl Ludecke

**Staff Present:**

Terrie Diesbourg, Director, Customer Services Division  
Anita Greiner, Senior Planner, Customer Services Division  
Anna Ely, Public Hearing Coordinator, Customer Services Division  
Sherie Ross, Public Hearing Coordinator, Planning and Development Services Division  
Melanie Marsh, Deputy County Attorney

Chairman Schreiner called the meeting to order at 1:00 p.m. He noted the Proof of Publication on the screen, adding that it is on file in the Customer Services Division. He stated for the record that there was a quorum present. He explained that all letters, petitions, photographs, and other materials presented at this meeting by applicants and those in support or opposition must be submitted to staff prior to proceeding to the next case.

Chairman Schreiner explained the procedure for hearing cases on the consent agenda.

**TABLE OF CONTENTS**

<b><u>CASE NO.</u></b>	<b><u>OWNER/ APPLICANT</u></b>	<b><u>AGENDA NO.</u></b>
Consideration of Minutes	January 12, 2006	
Withdrawals: BOA#15-06-5	Gerald and Lori A. Monroe	4
Postponements: BOA#16-06-3	James and Marion Moore/Chris Burnham	5
Discussion of Consent Agenda		
Consent Agenda Approval:		
BOA#14-06-2	Donnie R. and Sherry A. Rife	3
BOA#17-06-4	Robert D. and Patricia A. Spears/Scott C. Lee and David Norris	6
Regular Agenda:		
BOA#122-05-3	Pete Benevides/Steven J. Richey, P.A.	1
BOA#13-06-4	Michael H. Mosler Sr. and Christian A. Mosler	2
BOA#27-05-3	William and Cheryl Horvath/Russell Development, Inc.	7
Discussion	New Assistant Attorney Enforcement of Variances	

**Minutes**

**MOTION by Henry Wolsmann, SECONDED by Mary Link Bennett to approve the January 12, 2006 Board of Adjustment Public Hearing minutes, as submitted.**

**FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke**

**AGAINST: None**

**MOTION CARRIED: 7-0**

**CASE NO.: BOA#15-06-5**

**AGENDA NO.: 4**

**OWNERS/APPLICANTS: Gerald and Lori A. Monroe**

Anita Greiner, Senior Planner, stated that there has been a request for withdrawal of the above case.

**MOTION by Bob Fox, SECONDED by Mary Link Bennett to accept the withdrawal of BOA#15-06-5.**

**FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke**

**AGAINST: None**

**MOTION CARRIED: 7-0**

**CASE NO.: BOA#16-06-3**

**AGENDA NO.: 5**

**OWNERS: James and Marion Moore**  
**APPLICANT: Chris Burnham**

Anita Greiner, Senior Planner, stated that there has been a request for the above case to be continued.

**MOTION by Mary Link Bennett, SECONDED by Ruth Gray to continue BOA#16-06-3 until the March 9, 2006 Lake County Board of Adjustment public hearing.**

**FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke**

**AGAINST: None**

**MOTION CARRIED: 7-0**

**Discussion of Consent Agenda**

There was no one on the Board nor anyone in the audience who had an objection to the following cases remaining on the consent agenda: BOA#14-06-2 and BOA#17-06-4. Donald Schreiner asked that BOA#13-06-4 be removed from the consent agenda and placed on the regular agenda. A member in the audience asked that BOA#27-05-3 be removed from the consent agenda and placed on the regular agenda.

**BOARD OF ADJUSTMENT**

**FEBRUARY 9, 2006**

**CASE NO.:** BOA #14-06-2 **AGENDA NO.:** 3  
**OWNERS/APPLICANTS:** Donnie R. and Sherry A. Rife

**CASE NO.:** BOA#17-06-4 **AGENDA NO.:** 6  
**OWNERS:** Robert D. and Patricia A. Spears  
**APPLICANTS:** Scott C. Lee & David Norris

**MOTION by Carl Ludecke, SECONDED by Mary Link Bennett to take the following actions on the above consent agenda:**

<b>BOA#14-06-2</b>	<b>Approval with one condition</b>
<b>BOA#17-06-4</b>	<b>Approval with conditions</b>

**FOR:** Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

**AGAINST:** None

**MOTION CARRIED:** 7-0

CASE NO.: BOA#122-05-3

AGENDA NO.: 1

OWNER: Pete Benevides  
APPLICANT: Steven J. Richey, P.A.

Anita Greiner, Senior Planner, showed the aerial from the staff report on the monitor. She said she had spoken with Mary Ludwig, and the request has changed. Therefore, most of the staff report no longer applies. Ms. Greiner explained that the original parent parcel was a 240-acre parcel. The subject parcel is 40 acres. In 1995, the owner at that time did an agricultural lot split, creating four 40-acre parcels and an 80-acre parcel. In 2002, the 80-acre parcel was split into two 40-acre parcels. The subject parcel is one of those 40-acre parcels. The staff report for this case requested a split of the subject parcel into four parcels, two five-acre parcels, a 19-acre parcel, and an 11-acre parcel. The new request is a variance to allow a split into two 20-acre parcels. She submitted a 1998 aerial (County Exhibit A) showing this new request. The number of lots now meets the lot split requirement. However, the lots do not front on a County-maintained paved road or a 50-foot wide easement that connects to a County-maintained paved road so a variance will still be required. She submitted a map as County Exhibit B. She pointed out Robbins Road, a County-maintained paved road, noting where it ends, and the 20-foot wide paved private easement. She also pointed out the 50-foot wide paved private easement. She submitted a boundary survey (County Exhibit C) showing the wetlands and flood zone on the property. Staff originally recommended denial of their first request for four lots because of the restraints from the wetlands and the flood zone. With the revised request for two lots, Ms. Greiner pointed out that top parcel is already developed with a house. Therefore, there would only be one additional dwelling unit. She added that the 50-foot wide easement narrows to a 40-foot easement. If the Board approves this variance, staff would recommend that the easement be created to be a 50-foot wide easement going into the lot at least 150 feet and that any permits or requirements from Florida Department of Environmental Protection (FDEP) or St. Johns River Water Management District must be met since the easement will be created through a wetland area and a flood zone area.

When Darren Eslinger asked if that easement already exists, Ms. Greiner said it may be an easement on paper rather having been constructed. Mary Ludwig, representative for the applicant, can explain that further.

Mr. Greiner stated that before anything is done on this property, the County would like to see something from FDEP or St. Johns to ensure that any requirements they have of the owner regarding the road would be acceptable. When Mr. Eslinger asked about the picture of possible road construction, Ms. Greiner said she did not know if Mr. Benevides had any permits at this time. Mr. Benevides was present to answer questions.

Ms. Greiner noted that the size of the proposed lots exceeds the requirements of the zoning and future land use classification. The parcels surrounding the subject parcel are large parcels.

In response to Henry Wolsmann, Ms. Greiner said 27.6 acres of the 40-acre parcel are wetlands and 12.3 acres are uplands. At the request of Mr. Schreiner, Ms. Greiner pointed out the location of the house on the top parcel. When Mr. Schreiner noted that it was in the flood zone, Ms. Greiner said it is in the uplands portion of the flood zone. The lower parcel will have about seven acres of uplands.

Mary Ludwig, a paralegal with the law office of Steven J. Richey, P.A., explained the original and revised requests. She asked that County Exhibit B be placed on the screen again. She said the 20-foot easement is fully paved, maintained, and gated on both sides by the owners who utilize the easement. They are the ones who maintain the easement. This is a private easement strictly for the owners that it serves. The two proposed lots would be created off this easement to their easement, which is currently 40 feet wide. Their client has agreed to give the additional ten feet so the easement will be 50 feet wide to the southerly boundary. Regarding Ms. Greiner's statement that the easement must go into the southern 20 acres at least 150 feet, the easement would actually go to the southern boundary as that is the only legal access to the property (two larger parcels) south of the subject property. After the 50-foot wide easement reaches the southern boundary, it will then continue on as a 40-foot wide easement. That easement has been in

CASE NO.: BOA#122-05-3

AGENDA NO.: 1

OWNER: Pete Benevides  
APPLICANT: Steven J. Richey, P.A.

PAGE NO.: 2

existence since the large lot split approval was granted by the County. She showed a 1998 aerial and submitted it as Applicant Exhibit A. She said the easement exists at this time but is not dedicated to the public. That easement has always been a dirt easement. Although the area around the easement is heavily treed, it is passable. She said the applicant is agreeable to the recommended condition of the variance that all necessary state, local, and federal permits be obtained for the two parcels and/or the roadway going through that area.

When Mr. Wolsmann asked if Fire Rescue had reviewed this for accessibility, Ms. Greiner said it had not seen it because staff was recommending denial. In addition, the easement is gated. It appeared to her when she visited the site that construction was being done on the easement to make it more passable. If that is the case, she felt permits were needed from FDEP. If this is approved, she said a condition could be added that the Customer Services Division must inspect the easement to ensure the easement is passable before the final minor lot split development order is issued.

Regarding the 40-foot wide easement, Ruth Gray asked if it would be paved once St. Johns approves it. Ms. Ludwig replied that the portion of the easement on their property will be stabilized to some extent, but that does not necessarily mean paving it as it is a private easement only serving the larger parcels that are adjoining the subject property. Public Works has no long-term plans for connection; it does not tie into any local, arterial, or connector roads.

Since it is a gated access, Donald Schreiner asked how emergency vehicles would access the property. Mr. Ludwig explained that an alarm-sensitive device would be added to the gate. There is only one gate. If an emergency vehicle approaches the gate, the gate would automatically open and remain open until it is manually closed.

Mary Link Bennett asked the extent of the wetlands in the adjacent properties as well as on the other easement. Referring to County Exhibit C, Ms. Ludwig replied that the property to the west of the subject site has wetland areas. The wetlands on the subject site tie into other wetlands on the west side. The only actual wetland impact if this parcel is divided into two 20-acre lots would be near the existing house on the north 20-acre lot.

Mr. Wolsmann asked how much swamp was in this area. Ms. Ludwig showed the plat map from the staff report on the monitor and submitted a 2004 aerial as Applicant Exhibit B.

Since this revised request would result in only one additional lot, Ms. Ludwig said there would be no environmental impact as far as species. This area is an environmentally sensitive area. The only area that would be disturbed on the site is the actual house pad area. The rest of the property would remain as it is. No mitigation is being proposed.

There was no one else in the audience who wished to speak on this case.

**MOTION by Henry Wolsmann, SECONDED by Mary Link Bennett to deny the variance request in BOA#122-05-3.**

Mr. Wolsmann felt there were too many wetlands. Ms. Gray stated that the property has adequate uplands, and St. Johns River Water Management District will review the road situation.

Mr. Bennett said her concern is that this area is environmentally sensitive. In addition, even though the road access is private, it could affect the flood situation. Ms. Gray said that at first she felt this was creeping subdivision growth. However, she changed her mind when she decided that there were adequate uplands; and it is up to St. Johns to protect the road situation.

**BOARD OF ADJUSTMENT**

**FEBRUARY 9, 2006**

**CASE NO.: BOA#122-05-3**

**AGENDA NO.: 1**

**OWNER: Pete Benevides**  
**APPLICANT: Steven J. Richey, P.A.**

**PAGE NO.: 3**

**FOR: Fox, Wolsmann, Bennett, Schreiner**

**AGAINST: Eslinger, Gray, Ludecke**

**MOTION CARRIED: 4-3**

CASE NO.:

BOA#13-06-4

AGENDA NO.:

2

OWNERS/APPLICANTS:

**Michael H. Mosler Sr. and  
Christian A. Mosler**

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval. She showed the aerial and pictures from the staff report on the monitor. She submitted a survey as County Exhibit A. The ten-foot setback for the proposed 16-foot by 20-foot detached garage is the required setback.

Donald Schreiner said he had asked that this case be removed from the consent agenda because he questioned the hardship when it is self-created. Ms. Greiner said evidence of either a hardship or principles of fairness must be shown. His objection was that in several cases they have heard in the past, people build these expensive homes and, at the last moment, request a variance. In such cases, he did not understand how a hardship or principles of fairness apply. This is happening throughout the County. He asked when this would stop.

From staff's standpoint, Ms. Greiner said this request does not come close to exceeding the impervious surface ratio. The applicants/owners are not overbuilding for the lot.

Ruth Gray said she lives across the lake from this house; and during the past five years, there was an attempt to annex this property into the City of Eustis and it failed. The designation of Planned Unit Development (PUD) is misleading because after the PUD was granted, the prior owner gave up on creating a PUD and instead sold off five five-acre lots. The subject property is one of these five-acre lots. Meanwhile there was a fight ensuring two lots away to make that area R-1 zoning rather than one-acre and five-acre lots. She felt this is a vast improvement and could support the request.

Carl Ludecke said he could also support this request. He felt five-acre tracts was a good move for these properties. If this proposed garage had an apartment in it, Mr. Ludecke asked Ms. Greiner if it could be considered an accessory dwelling unit and placed in the proposed location. If it was considered an accessory dwelling unit, Ms. Greiner said there is nothing prohibiting it from being in front of the main dwelling unit. If it was attached, it would also be allowed. In this case, it would be better for the garage to be in the proposed location rather than in the rear yard so it would be farther from the lake.

Mr. Schreiner said his concern has been satisfied.

**MOTION by Darren Eslinger, SECONDED by Mary Link Bennett to approve the variance request in BOA#13-06-4 with the following conditions:**

**The detached garage must be constructed in the same architectural style as the dwelling unit and must use the same roofing material and color; the existing exterior of the detached garage must be of the same material and colors as the dwelling unit.**

**The detached garage must be located on the parcel as indicated on the site plan that was submitted.**

**The owners must plant a treed buffer between the proposed garage and the south property line. The buffer shall consist of trees listed as recommended by Lake County Land Development Regulation 9.01.10.B. The trees shall be at least 15 gallons in size and located 15 feet apart.**

**The detached garage must be inspected by the Customer Services Division for compliance with the conditions set forth by the Board of Adjustment prior to a final inspection of the garage by the Lake County Building.**

Carl Ludecke suggested adding a condition that staff from the Customer Services Division make two

**CASE NO.:** **BOA#13-06-4** **AGENDA NO.:** **2**

**OWNERS/APPLICANTS:** **Michael H. Mosler Sr. and  
Christian A. Mosler** **PAGE NO.:** **2**

inspections of the project before the final inspection to ensure that all requirements are being followed.

**AMENDMENT by Darren Eslinger, SECONDED by Mary Link Bennett to approve the variance request in BOA#13-06-4 with the addition of the following condition: An inspection shall be done prior to the pouring of the slab in the garage.**

**FOR:** **Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke**

**AGAINST:** **None**

**AMENDMENT  
CARRIED:** **7-0**

**FOR:** **Fox, Eslinger, Gray, Bennett, Schreiner, Ludecke**

**AGAINST:** **Wolsmann**

**MOTION, AS  
AMENDED, CARRIED:** **6-1**

CASE NO.: BOA#27-05-3

AGENDA NO.: 7

OWNERS: William and Cheryl Horvath  
APPLICANT: Russell Development, Inc.

Anita Greiner, Senior Planner, showed the aerial from the staff report on the monitor.

Ralph Bartholomew said he was opposed to the original variance because of the conditions around the lake and the house being so close to the lot lines. He spoke of the 3-3/4 inch rain earlier this week. The rain coming off that roof was unbelievable as it went straight into the canal because the house is within seven feet of the canal. He felt there must be a tremendous erosion problem.

Ms. Greiner explained that this is an amendment to an existing variance that was approved in April of 2005 to allow the owners to put the house on the parcel. The house exists, but they cannot obtain a final inspection on the house until the storm water plan is in and inspected by the Customer Services Division per this Board's recommendation in April. After the house was constructed, they discovered that the original storm water plan would not work. A new set of storm water plans was drawn up so they are now requesting a different method of retaining the storm water.

Mr. Bartholomew said he understood that there was to be an embankment all around the property to contain any water that ran off, but that has never been done. Ms. Greiner pointed out that the new storm water plan is a better solution. She discussed the new storm water plan that was included with the staff report. When Mr. Bartholomew was informed that the engineering firm that drew the storm water plans was located in Mount Dora, he questioned whether the firm was aware of the torrential rains in this area.

Carl Ludecke stated that the applicant is proposing to maintain the first half-inch of storm water on the property. Additional runoff can go into the canal because that water is 99 percent clean. Mr. Bartholomew felt that if the owners would not fertilize their lawn to a great extent, then there would be no runoff of fertilizer to pollute the canal. He said he lives across from the subject property.

The applicant was present but had nothing to add to Ms. Greiner's presentation.

**MOTION by Carl Ludecke, SECONDED by Darren Eslinger to approve the variance request in BOA#27-05-3 with the following conditions:**

**The storm water plan must be constructed as indicated on the approved plans and must be inspected by the Lake County Customer Services Division prior to a final inspection of the single-family dwelling unit by the Lake County Building Division.**

**The owners and subsequent owners shall be required to maintain the storm water plan as approved.**

**FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke**

**AGAINST: None**

**MOTION CARRIED: 7-0**

**Discussion**

Melanie Marsh, Deputy County Attorney, stated that Kevin McBride has left the County Attorney's office and gone to work for the Orange County State Attorney's office. She introduced their new Assistant County Attorney, LeChea Parson.

Ruth Gray asked Ms. Marsh if the Department of Growth Management has the right to make rules. After this Board has granted a variance and required a swale, she said Lake County does not have the policing power to see if the requirements are met. She spoke of several articles in the Sentinel recently regarding swales in Clermont that had filled with sediment through the years. She questioned whether this Board could be creating problems in the future by granting variances requiring swales and then not policing what is required. She asked whether the Growth Management Department has the right to impose a rule that recipients of these variances must confirm each year that they are still adhering to the requirements.

Ms. Marsh explained that the County has the right through Code Enforcement to enforce the orders that this Board makes. She said the Board of County Commissioners (BCC) could pass an ordinance requiring those people who receive a variance to provide proof each year that they have complied with the requirements. However, that would take a lot of administrative time for someone to review the information. That is a policy question rather than a legal question and would need to go through the Director of Growth Management and the County Manager to determine how they would want to fund that. Ms. Gray did not feel it would be difficult to track this on a computer. In order to have the effect of law, Ms. Marsh said it must be an ordinance. A policy cannot be enforced.

Carl Ludecke explained that all new subdivisions must have a homeowners' association. The homeowners' association is required to have the engineer of record or another engineering firm stipulate that the swales and retention ponds have not been disturbed during the past year. That must be submitted every year. Code Enforcement addresses complaints.

**Adjournment**

There being no further business, the meeting was adjourned at 2:10 p.m.

Respectfully submitted,

---

Sherie Ross  
Public Hearing Coordinator

---

Donald Schreiner  
Chairman